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8 **BEFORE THE ARIZONA MEDICAL BOARD**
9

10 In the Matter of:

11 **RONALD A. BERNSTEIN, M.D.**
12 Holder of License No. 15078
12 For the Practice of Medicine
13 In the State of Arizona,

14 Respondent.

Investigation Case Nos. MD-01-0777 and
MD-02-0309

**CONSENT AGREEMENT AND
ORDER FOR DECREE OF CENSURE
AND PRACTICE RESTRICTION**

15 **CONSENT AGREEMENT**
16

17 **RECITALS**

18 In the interest of a prompt and judicious settlement of this case, consistent with the
19 public interest, statutory requirements and responsibilities of the Arizona Medical Board
20 ("Board"), and under A.R.S. §§ 32-1401 *et seq.*, and 41-1092.07(F)(5), Ronald A. Bernstein,
21 M.D., holder of license number 15078 to practice allopathic medicine in the State of Arizona
22 ("Respondent"), and the Board enter into the following Recitals, Findings of Fact,
23 Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

24 1. Respondent has read and understands this Consent Agreement as set forth
25 herein, and has had the opportunity to discuss this Consent Agreement with an attorney.
26 Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the
expense and uncertainty of an administrative hearing.

1 2. Respondent understands that he has a right to a public administrative hearing
2 concerning the above-captioned matter, at which administrative hearing he could present
3 evidence and cross-examine witnesses. By entering into this Consent Agreement,
4 Respondent freely and voluntarily relinquishes all rights to such an administrative hearing,
5 as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other
6 administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent agrees that the Board may adopt this Consent Agreement or any
8 part of this agreement, under A.R.S. § 32-1451(F). Respondent understands that this
9 Consent Agreement or any part of the agreement may be considered in any future disciplinary
10 action against him.

11 4. Respondent understands this Consent Agreement deals with Board
12 Investigation Case No. MD-01-0777 and MD-02-0309 involving allegations of
13 unprofessional conduct against Respondent. The investigation into these allegations against
14 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

15 5. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of other matters currently pending before the Board, if any, and does
17 not constitute any waiver, express or implied, of the Board's statutory authority or
18 jurisdiction regarding any other pending or future investigation, action or proceeding.
19 Respondent also understands that acceptance of this Consent Agreement does not preclude
20 any other agency, subdivision or officer of this state from instituting any other civil or
21 criminal proceedings with respect to the conduct that is the subject of this Consent
22 Agreement.

23 6. All admissions made by Respondent in this Consent Agreement are made solely
24 for the final disposition of this matter, and any related administrative proceedings or civil
25 litigation involving the Board and Respondent. This Consent Agreement is not to be used
26 for any other regulatory agency proceedings, or civil or criminal proceedings, whether in the

1 State of Arizona or any other state or federal court, except related to the enforcement of the
2 Consent Agreement itself.

3 7. Respondent acknowledges and agrees that, upon signing this Consent
4 Agreement and returning this document to the Board's Executive Director, Respondent may
5 not revoke his acceptance of the Consent Agreement or make any modifications to the
6 document, regardless of whether the Consent Agreement has been issued by the Executive
7 Director. Any modification to this original document is ineffective and void unless mutually
8 approved by the parties in writing.

9 8. Respondent understands that this Consent Agreement shall not become
10 effective unless and until adopted by the Board and signed by its Executive Director or
11 designee.

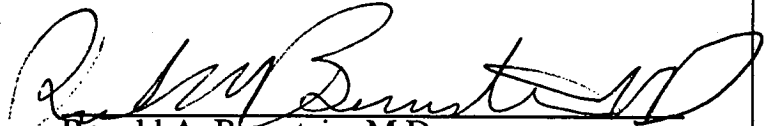
12 9. Respondent understands and agrees that if the Board does not adopt this
13 Consent Agreement, he will not assert as a defense that the Board's consideration of this
14 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

15 10. Respondent understands that this Consent Agreement is a public record that
16 may be publicly disseminated as a formal action of the Board, and shall be reported as
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
18 Protection Data Bank.

19 11. If a court of competent jurisdiction rules that any part of the Consent
20 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall
21 remain in full force and effect.

22 12. Respondent understands that any violation of this Consent Agreement
23 constitutes unprofessional conduct under A.R.S. § 32-1401(24)(r)([v]iolating a formal order,
24 probation, consent agreement or stipulation issued or entered into by the board or its
25 executive director under the provisions of this chapter) and shall result in disciplinary action
26 under A.R.S. § 32-1451 *et seq.*

1 DATED: 5/13/2003


Ronald A. Bernstein, M.D.

2 Reviewed and Approved as to form:

3
4 By: 
Jeffrey L. Bradford, Esq.
5 Attorney for Respondent

6 **FINDINGS OF FACT**

7 By stipulation of the parties, this Consent Agreement is entered into for final
8 disposition of the matters described herein. Respondent denies the factual allegations
9 contained in Paragraphs 7, 10, 12, 15, 17, 18, 19 and 21, but for purposes of this Consent
10 Agreement only, Respondent admits that sufficient evidence exists for the Board to make the
11 following Findings of Fact:

12 1. The Board is the duly constituted authority for the regulation and control of the
13 practice of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of License No. 15078 for the practice of allopathic
15 medicine in the State of Arizona.

16 3. Respondent has been suffering from clinical depression and is currently unable
17 to practice medicine.

18 **CASE NO. MD-01-0777**

19 4. On November 2, 2001, as required under A.R.S. § 32-1451(B), two health care
20 institutions notified the Board that the neurosurgery privileges of Respondent had been
21 temporarily suspended "because of concerns regarding care deemed to be possibly
22 detrimental to patient safety and/or to delivery of quality patient care."

23 5. On July 16, 2001, Respondent performed a right suboccipital craniectomy to
24 remove acoustic neuroma on Patient J.A.F., a 50-year old, morbidly obese male with a rather
25 large acoustic nerve tumor, measured by magnetic resonance imaging ("MRI") at 2x2x3-
26 centimeter, large or moderately large for the site; there was erosion of the porous acousticus.

6. During the course of the Board's investigation, Board Staff reviewed Respondent's operative note. The operative note describes Respondent having trouble locating the tumor and having to resort to biopsy of a number of sites. The pathologist was unable to confirm a tumor diagnosis on ten frozen sections.

7. Patient J.A.F. suffered neurological injury as a result of the surgery as detailed on the third post-operative day with clinical evidence of a major vascular injury to the pons and cerebellum, producing a condition of near quadriplegia.

8. A follow-up MRI demonstrated evidence of major vascular insult to the cerebellum and pons in addition to the tumor that still remained.

9. Patient J.A.F. expired on September 18, 2001.

10. The autopsy report indicated that Patient J.A.F. "sustained infarcts of the brainstem and cerebellum in the territories of the right and left posterior cerebellar arteries during attempted surgical resection of a right acoustic schwannoma. These infarcts were the result of mechanical trauma to the arteries during repeated biopsies of normal cerebellar tissues."

11. On March 8, 2002, Respondent's neurosurgery privileges were permanently revoked at each of the reporting institutions.

12. Respondent failed to meet the accepted standard of care in that he improperly performed brain surgery on patient J.A.F. that resulted in injury.

CASE NO. MD-02-0309

13. The Board initiated case number MD-02-0309 after receiving notice of a medical malpractice action against the Respondent.

14. On March 19, 1998, Respondent performed a right carpal tunnel release procedure on Patient N.N., a 38-year old female, with a medical history significant for previous surgeries including a cervical discectomy/fusion and a left carpal tunnel syndrome release. The procedure resulted in severing Patient N.N.'s nerves, particularly the palmar

1 cutaneous nerve.

2 15. The incision for the right carpal tunnel release was placed more radially than
3 is acceptable and the incision made for the ulnar transposition was more anterior than is the
4 standard, which resulted in a subsequent hypertrophy of the scar requiring a later revision.

5 16. On June 16, 1998, Respondent performed a right ulnar nerve neurolysis and
6 transposition on the inside of the Patient N.N.'s right elbow. The surgery resulted in severing
7 the Patient N.N.'s nerves, particularly two of the three branches of the antebrachial cutaneous
8 nerve.

9 17. The incision was placed more anteriorly than is the standard, resulting in injury
10 to two branches of the medial antebrachial cutaneous nerve, which resulted in the
11 misdiagnosis of Patient N.N.'s post-operative complaints (after the March 19, 1998
12 procedure) as ulnar nerve problems.

13 18. Respondent did not recognize that he had divided the palmar branch of the
14 Patient's right median nerve.

15 19. During the course of the investigation, Respondent was interviewed by Board
16 Staff, and it was determined that Respondent is not aware of all the appropriate examinations
17 generally performed in diagnosing peripheral neuropathy, such as ulnar neuropathy at the
18 elbow and/or carpal tunnel syndrome. Respondent indicated that he seldom performs a
19 Phalen's test for possible carpal tunnel syndrome and usually performs a Tinel's test. He also
20 indicated that he was unsure as to what a compression test indicated.

21 20. Regarding the ulnar transposition at the elbow, Respondent indicated that he
22 ordinarily makes a medial incision extending anteriorly and did not use a tourniquet in this
23 specific surgery. He further indicated that, probably the branches of the antebrachial
24 cutaneous nerve could be seen, and moving the nerve "laterally" basically means anteriorly
25 and laterally.

26 21. Respondent failed to meet the acceptable standard of care in that he improperly

1 performed carpal tunnel and ulnar nerve surgery on patient N.N. that resulted in injury.

2 22. Respondent and the Board waive all further findings of fact.

3 **CONCLUSIONS OF LAW**

4 1. The Board possesses jurisdiction over the subject matter and over Respondent.

5 2. The conduct and circumstances described in paragraphs 4 through 21 above
6 constitute unprofessional conduct under A.R.S. § 32-1401(24)(q) ([a]ny conduct or practice
7 which is or might be harmful or dangerous to the health of the patient or the public).

8 3. The conduct and circumstances described in paragraphs 4 through 21 above
9 constitute unprofessional conduct under A.R.S. § 32-1401(24)(ll) ([c]onduct that the board
10 determines is gross negligence, repeated gross negligence resulting in harm to or the death
11 of a patient).

12 4. The conduct and circumstances described in paragraph 3 above establishes that
13 Respondent is mentally or physically unable to safely engage in the practice of medicine
14 under A.R.S. § 32-1451(A) and (E)(3).

15 **ORDER**

16 **IT IS HEREBY ORDERED THAT:**

17 1. Respondent is hereby issued a Decree of Censure for performing brain surgery,
18 carpal tunnel and ulnar nerve surgery below the standard of care as described in paragraphs
19 4 through 21 above.

20 2. Respondent shall not practice clinical medicine or any medicine involving
21 direct patient care, and is prohibited from prescribing any form of treatment including
22 prescription medications, until Respondent applies to the Board and affirmatively receives
23 the Board's approval to return to practice. Respondent agrees to submit to any combination
24 of Board staff approved physical examinations, psychiatric evaluations, or successful passage
25 of the Special Purpose Licensing Examination or other competency examinations/evaluations
26 or interviews the Board or its staff finds necessary to assist it in determining Respondent's

1 ability to safely and competently return to the active practice of medicine.

2 3. Respondent shall submit to psychiatric evaluations and treatment as provided
3 by John Misiaszek, M.D., ("Treating Psychiatrist"), or another psychiatrist approved by
4 Board staff, within thirty days from the date of this Consent Agreement at Respondent's own
5 expense, and shall remain in treatment until Respondent's Treating Psychiatrist provides
6 written confirmation to the Board that Respondent has completed his treatment or needs no
7 further treatment. Respondent shall instruct his Treating Psychiatrist to release to the Board,
8 upon its request, all records relating to his treatment and to submit written quarterly reports
9 to the Board on or before the 15th day of March, June, September and December of each year.
10 The Treating Psychiatrist's quarterly reports shall contain information about Respondent's
11 diagnosis, prognosis, and recommendations for continuing care and treatment. Respondent
12 shall be responsible for paying for the preparation of the written quarterly reports.

13 4. This Order is the final disposition of case numbers MD-07-0777 and MD-02-
14 0309.

15
16 DATED AND EFFECTIVE this 19th day of MAY, 2003.

17
18 ARIZONA MEDICAL BOARD



By Barry A. Cassidy
BARRY A. CASSIDY, Ph.D., P.A.-C.
Executive Director

1 ORIGINAL of the foregoing filed
2 this 19th day of MAY, 2003, with

3 Arizona Medical Board
4 9545 E. Doubletree Ranch Road
5 Scottsdale, Arizona 85258

6 EXECUTED COPY of the foregoing mailed
7 by U.S. Certified Mail this 19th day of
8 MAY, 2003, to:

9 Ronald A. Bernstein, M.D.
10 4975 N. Via De La Granja
11 Tucson, Arizona 85718-7466
12 Respondent

13 EXECUTED COPY of the foregoing mailed
14 this 19th day of MAY, 2003, to:

15 Jeffrey Bradford, Esq.
16 Bradford Law Offices PLLC
17 4131 N. 24th Street, Suite C-201
18 Phoenix, Arizona 85016-6256
19 Attorney for Respondent

20 Roberto Pulver
21 Assistant Attorney General
22 1275 W. Washington, CIV/LES
23 Phoenix, Arizona 85007
24 Attorney for the State

25 Brenda Adel
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